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IN THE

Supreme Court of the United States

October Term, 1967

No. 761

INTERNATIONAL ATLAS SERVICES, INC., a Division of ATLAS CORPORATION, formerly known as INTERNATIONAL AIRCRAFT SERVICES, INC., a Delaware Corporation, *Petitioner,*

vs.

TWENTIETH CENTURY AIRCRAFT COMPANY, a partnership; J. B. LEWIN, S. WEISS, R. R. HART and J. FISCHGRUND, individually and as partners doing business as TWENTIETH CENTURY AIRCRAFT COMPANY,

Respondents.

Petition for a Writ of Certiorari to the Court of Appeal for the Second Appellate District of the State of California.

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vs.

TWENTIETH CENTURY AIRCRAFT COMPANY, a partnership; J. B. LEWIN, S. WEISS, R. R. HART and J. FISCHGRUND, individually and as partners doing business as TWENTIETH CENTURY AIRCRAFT COMPANY,

Respondents.

Petition for a Writ of Certiorari to the Court of Appeal for the Second Appellate District of the State of California.

Petitioner International Atlas Services, Inc., prays that a writ of certiorari issue to review the decision of the District Court of Appeal, Second Appellate District, State or California, filed in the above-entitled case on May 31, 1967. On November 27, 1964, the Superior Court of the State of California, for the County of Los Angeles, entered judgment in favor of respondents and against petitioner herein [14].[1] Said judgment was confirmed on appeal to the District Court

[1]Unless otherwise indicated numbers in brackets refer to pages in the Clerk's Transcript.

of Appeal for the Second Appellate District, State of California, in an opinion filed on May 31, 1967 (Petition for Rehearing, denied).

A petition for hearing was filed with the Supreme Court of the State of California and the Court denied the petition without opinion by order filed July 26, 1967 (see order of Supreme Court, State of California, dated July 26, 1967, filed herein).

Citations to Opinion Below.

The opinion filed on May 31, 1967, by the District Court of Appeal, Second Appellate District, State of California, is reported in 251 A.C.A. 495. A copy of said opinion is attached to this petition as Appendix A. An opinion was not filed by the Supreme Court of the State of California in support of its order dated July 26, 1967, denying petitioner's request for hearing.

Jurisdiction.

The decision of the District Court was filed and entered on May 31, 1967. A petition for rehearing was denied without opinion on June 27, 1967 (see order of District Court of Appeal, Second Appellate District, State of California, dated June 27, 1967, filed herein). Petitioner's Petition For Hearing to the Supreme Court of the State of California was denied on July 26, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 [3].

Questions Presented.

The trial of this case and the opening, answering, and reply briefs filed thereafter in the District Court of Appeal involved the application of California's law of accession. Although 49 U.S.S. §1403 was men-

tioned in respondents' answering brief in connection with the question of notice (Resp. Br. pp. 15-22), the cause proceeded under California law until oral argument before the District Court of Appeal. During oral argument the District Court raised the problem concerning the effect of 49 U.S.C. §1403 on petitioner's position. The parties thereafter submitted supplemental briefs at the District Court's request.

A second oral argument was held on February 9, 1967, and was concerned primarily with the interpretation and effect of said federal statute. The District Court of Appeal filed its opinion on May 31, 1967. After an analysis of California law, the Court stated:

> "It would appear, then, that under California law Atlas at a minimum should recover the value of its engines and at a maximum should recover the engines themselves. Nevertheless, we have concluded that California law does not apply to this case, that the controversy is governed by the laws of the United States, and that under federal law Twentieth Century must prevail."[2]

The Court continued, holding that respondents must prevail in petitioner's claim and delivery action since petitioner had not recorded its interest in the property subject to the action pursuant to the provisions of 49 U.S.C. §1403.

As indicated, the District Court would have reversed the trial court's judgment and ruled for petitioner, but for its interpretation of 49 U.S.C. §1403. Two questions are presented in this petition:

1. Does 49 U.S.C. §1403 preempt state law and demand that the serial numbers of aircraft engines,

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[2]251 A.C.A. at 499; see Appendix A at p. 5.

which are placed on a given aircraft pursuant to a maintenance contract with the aircraft's registered owner, be recorded as provided in said section in order to protect the engine owner's interest against subsequent action by the conditional vendor of the aircraft?

2. Assuming *arguendo* that engines placed on an aircraft pursuant to a maintenance contract are within the scope of 49 U.S.C. §1403, does said section automatically invalidate the interest of the owner of the engines under the facts of the present case when said interest is not recorded pursuant to 49 U.S.C. §1403?

Statute Involved.

The statutory provision involved is Title 49, Section 1403 of the United States Code. It is reproduced in Appendix B.

Statement of the Case.

On April 8, 1961, respondents, as owners, sold aircraft No. N-90771 to President Airlines on a conditional sales contract for the sum of $525,000.00 [106]. Prior to said sales respondents knew that President Airlines would contract for the maintenance of the aircraft and that the aircraft's engines would be interchanged with the maintenance contractor's spare engines in order to keep the aircraft in operation during maintenance [112].

President Airlines entered into an agreement with petitioner for the maintenance of said aircraft, among others, on May 1, 1961. Paragraph VI of this agreement stated [107-108]:

> "IAS agrees to provide a spare QEC (That is an R2800-CB 16/17 or equivalent type engine with

accessories and demountable assembly) at each of the following locations: Oakland and Bradley. In addition thereto IAS agrees, upon request by Operator to make an additional QEC available for use by Operator in any area outside of the United States. . . . IAS agrees that as a spare QEC is installed on Operator's aircraft that it will replace such QEC at the location from which it was taken as soon as possible except that any QEC located outside the United States will be replaced at either Bradley or Oakland as above set forth. . . . Title to all spare QEC's and engine shall at all times remain in IAS and such title shall only be relinquished in writing by IAS. With respect to scheduled engine changes IAS will position a bare engine at Oakland or Bradley in advance of such scheduled engine change for build-up to QEC as quickly as possible after removal of the run-out engine.

Upon termination of this agreement, and for any reason, IAS engines are installed on the Operator's aircraft, Operator agrees to pay IAS in an amount equal to $6.50 times the engine operating hours accumulated on the IAS-owned engines from the termination date of this agreement until such time as the IAS engines are removed."

On June 6, 1961, respondents recorded a copy of their conditional sales agreement dated April 8, 1961, with the Federal Aviation Agency. President Airlines became the recorded owner of said aircraft on the same day through a certificate of registration with the Federal Aviation Agency on Form No. FAA-500 [Pre-Trial Conference Order Par. VII; Rep. Tr. p. 25].

Pursuant to its maintenance contract with President Airlines, petitioner installed two engines on said aircraft on August 2nd and September 13, 1961. Each engine had an agreed value of $23,000.00 [108-109]. Petitioner cancelled its maintenance agreement with President Airlines on September 27, 1961, and thereafter installed on said aircraft a third engine, valued at $23,000.00, and a QEC, valued at $15,000.00. This equipment was installed pursuant to a lease agreement between petitioner and President Airlines [109].

On November 7, 1961, petitioner notified respondents of petitioner's ownership of the three engines and demountable assembly installed on aircraft N-90771 [109]. Respondents also had been informed of this installation by petitioner's agent during October of 1961 [52]. Nevertheless, on November 7, 1961, respondents repossessed the aircraft, including the engines and demountable assembly, became recorded owners of said aircraft on December 6, 1961, and resold the aircraft, together with petitioner's engines and demountable assembly [93], on March 30, 1962, for the sum of $750,000.00 [110]. Said sale took place twenty-four days after petitioner had filed an action in the Superior Court of the State of California, County of Los Angeles, for the return of its engines and demountable assembly, and eighteen days after service on respondents of said action [110].

Petitioner did not record any document with the Federal Aviation Agency's Registry in Oklahoma City, Oklahoma, during its transaction with President, but

petitioner and respondents stipulated prior to trial that [111]:

> "The only recognized method of registering ownership of aircraft is with the Federal Aviation Agency through a certificate of registration on Form No. FAA-500 (Part A), which is carried in the aircraft and that there is no way of registering privately owned aircraft engines which are identifiable through their serial numbers."

At trial respondents did not contest plaintiff's ownership of the aircraft engines and demountable assembly prior to installation on aircraft No. N-90771 [100-102], and the parties further stipulated that "the document of ownership of privately owned aircraft engines are bills of sale, and plaintiff has the bills of sale for its three claimed engines in this matter" [111]. Respondents did maintain that through custom and usage in the aircraft industry title to engines attached to an aircraft followed the recorded title to the aircraft and, in the alternative, that petitioner had not been damaged because of respondents' actions since the engines in petitioner's possession after replacement were of equal value to the engines owned by petitioner (Resp. Br. pp. 5-7).

The trial court applied California law to the above facts and ruled in favor of respondents. This judgment was affirmed on appeal to the District Court of Appeal, Second Appellate District, State of California, on the new ground that petitioner's interest in the equipment had been destroyed by petitioner's failure to record pursuant to 49 U.S.C. §1403. Petitioner was denied a hearing by the California Supreme Court on July 26, 1967.

REASONS FOR GRANTING THE WRIT.

I.

The Decision of the District Court of Appeal Was in Error Since Maintenance Contracts Are Not Within the Scope of 49 U.S.C. Section 1403.

Petitioner does not question the constitutional right of the United States to enact legislation such as 49 U.S.C. §1403 or the fact that such legislation would preempt contrary state law on questions which fell within the scope of the section.[3] However, the right to own property is an inalienable right under the California Constitution[4] and petitioner has been deprived of his property, without compensation, through the operation of 49 U.S.C. §1403, as interpreted by the California District Court of Appeal. Before such a result is reached petitioner respectfully submits that this section of the federal code must be reviewed to determine if the business transaction described above indeed falls within the scope of the section.

Although the case law interpreting Section 1403 is extremely thin, petitioner contends that the United States Congress did not intend Section 1403 to include, and the language of that section does not include, temporary transfers of aircraft engines by their owner to the registered onwer of an aircraft pursuant to a maintenance contract. 49 U.S.C. §1403 was originally enacted as a part of the Civil Aeronautics Act of 1938.[5] the section did not provide for the recordation of in-

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[3]*United States v. United Aircraft Corp.* (D. Conn. 1948), 80 F. Supp. 2; *Continental Radio Co. v. Continental Bank & Trust Co.* (Tex. Civ. App. 1963), 369 S.W. 2d 359.

[4]Cal. Const., art. I, §1.

[5]Ch. 601, Title V, §503, 52 Stat. 1006 (1938).

dividual engines, which were not attached to any particular aircraft, and the Act was amended in 1948 to bring conveyances of aircraft engines within the scope of the recording provisions.[6] The purpose of the amendment was stated in House Report No. 2165:

> "This bill will facilitate the financing of new aircraft. Whenever new aircraft are purchased there must also be secured additional aircraft engines and spare parts to permit overhaul and replacement. The cost of these spares often amounts to twenty-five percent of the total purchase price.
>
> Under existing law, since a lien cannot be recorded on the separate engines and spare parts with the Civil Aeronautics Administrator, it is extremely difficult to finance a purchase by giving a mortgage or other lien on such engines and parts. This compels the purchaser to pay a greater percentage of the price in cash than would otherwise be necessary. This requirement for additional cash can be sufficient to deter the purchase of new aircraft. . . .
>
> Both the Congressional Aviation Policy Board and the President's Air Policy Commission recognized the desirability of facilitating the purchase of new aircraft by permitting greater use of secured financing. By extending the kinds of airline equipment on which liens may be given, this bill will help to achieve that end."[7]

The purpose of Section 1403 was to protect the security interests of financing institutions through recor-

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[6]Ch. 523 §3, 62 Stat. 494 (1948).

[7]H.R. Rep. No. 2165, 80th Cong., 2d Sess., in 2 U.S. Code Cong. & Ad. News 1896 (1948).

dation and invalidation of any prior, unrecorded interests in the security and any subsequent unrecorded conveyances of the security. This purpose was reaffirmed in 1959 when the provisions of the 1938 Act, as reenacted in 1958, were further amended to provide for the recordation of individual aircraft propellers.[8] House Report No. 445 paraphrased the earlier report and commented "it is logical that the production afforded by existing law to security owners of aircraft should be extended to include those having a separate security interest in propellers."[9]

Petitioner submits that Section 1403 is only concerned with the purchase, or equivalent long-term leasing, of aircraft engines and the protection of the security interest retained in the engines by the vendor. Neither the legislative history of the section nor the language of the section indicate that a short-term bailment was intended to be or is within the scope of that section. In the present case Atlas substituted its own engines on President's aircraft while it overhauled the replaced engines pursuant to its maintenance contract with President. The documents of title to the engines remained, and still remain, in Atlas. Atlas did not have a security interest in the spare engines, but in fact was the owner of the engines. Title to the engines was never transferred and President had no agreement with Atlas whereby title could be transferred. This business arrangement between petitioner and President represented an inexpensive alternative to the purchase by President of its own spare engines and parts under

[8]Act of 1938 repealed and re-enacted as Federal Aviation Act of 1958, 72 Stat. 731 (1958). 49 U.S.C. §1403 enacted Act of 1958, Title V, §503, 72 Stat. 773; propellers added Pub. L. 1959, §1, 73 Stat. 180.

[9]U.S. Code Cong. & Ad. News 1762 (1959).

some security arrangement with a third party. If President had followed the latter course its purchase would have fallen within the scope of Section 1403 and recordation by the third party would have been mandatory. But the former course, a maintenance agreement, transferred nothing except possession. In such a case petitioner submits that it did not require the protection of recordation, since it could not lose its ownership of the engines to a third party in any event, and that its business arrangement with President therefore does not fall within the scope of 49 U.S.C. §1403.

Aside from the theoretical problem concerning the intended scope of Section 1403, application of this section to the business transaction involved in the present suit raises a very practical problem: the nature of the document which should be recorded if Section 1403 controls. Petitioner submits that this difficulty itself indicates that Section 1403 is not applicable to such a business transaction. The maintenance agreement could not be recorded since it did not contain the engine numbers.[10] Although the record in the present action does not state what document accompanied the replacement engines, presumably some form of receipt was obtained by Atlas from President at the time the replacement engines were installed on the aircraft. However, such a document would certainly not be a "conveyance" under Section 1403(a)(1) since it would not effect "title to, or interest in, property," as defined in 49 U.S.C. §1301 (17). In addition, a receipt also would not constitute an "instrument executed for security purposes", as called for in 49 U.S.C. §1403(a)

[10]Engine number required by Administrator's 1961 regulation 14 C.F.R. §§ 501-505. Requirement retained in regulation as amended 14 C.F.R. §§ 49.41-.45 (1964).

(2). Such a paper undoubtedly would not be recordable under Section 1403 and, indeed, the parties stipulated in their Pre-Trial Conference Order that "there is no way of registering privately owned aircraft engines which are identifiable through their serial numbers" [111, Par. XII].

The core of this present case is that an aircraft maintenance agreement is essentially an aircraft owner's alternative to the expensive purchase of spare engines and parts under various financing arrangements. A lender who takes a security interest in an aircraft in return for his loan certainly needs protection and a guarantee that the equity in the aircraft is as represented. A lender needs protection against third party creditors who have advanced funds on the strength of the aircraft owner's presumed ownership of the equipment in his possession. In a transaction involving a short-term bailment the urgency of this protection is almost nonexistent. Maintenance agreements are not uncommon in the aircraft industry, as indicated by respondent's admission that it knew President would have to enter into such an agreement with someone in order "to keep its aircraft flying" [112]. Further, it is "common practice under all maintenance agreements to interchange engines" [112]. Petitioner does not believe that this expensive and common means of avoiding purchase of engines and spare parts should be hampered and perhaps destroyed by subjecting it to a recording system which was never intended to handle such a transaction, even assuming that the recording system could physically process the increase in docubents which must inevitably result from forcing maintenance agreements within the scope of Section 1403.

II.

Petitioner's Property Rights Should Not Be Destroyed Even if the Business Transaction Is Within the Scope of 49 U.S.C. Section 1403 (a)(2).

If petitioner's maintenance agreement, and the transfer of aircraft engines to President pursuant to that agreement, are within the scope of Section 1403(a)-(2), petitioner submits that this interpretation does not mean that its ownership rights in the aircraft engines must be automatically eliminated under Section 1403(c) because petitioner failed to record his ownership interests. Section 1403(c) does state that "no conveyance or instrument the recording of which is provided for by subsection (a) of this section shall be valid . . . against any person other than the person by whom the conveyance or other instrument is made or given." Petitioner contends, however, that this language cannot be blindly applied without reference to the factual context in which a given question arises and that the destruction of petitioner's property rights under Section 1403 constitutes an erroneous interpretation of the paragraph.

First, it would be impossible to destroy petitioner's ownership rights under Section 1403(c) if that paragraph is interpretated literally. The District Court of Appeal apparently assumed without further analysis that since the transfer from petitioner to President should have been recorded under 1403(a)(2) "its failure to record in Oklahoma City its ownership of the engines prior to repossession of the aircraft by Twentieth Century resulted in a subordination of its interest in the engines to the recorded interest of Twentieth Cen-

tury in the aircraft as a whole."[11] But Section 1403 (c) only states that an unrecorded instrument shall not be valid against a third person. Therefore, Section 1403(c) would only invalidate whatever document was executed at the time of engine installation to evidence the change of possession. The invalidation of this document would have no bearing whatsoever upon the documents of title in possession of petitioner and would leave the engine's ownership in petitioner. Section 1403(c) does *not* state that non-recordation of a recordable instrument shall destroy an entity's interest in the property involved. The paragraph only states that the document which should have been recorded is itself invalid. Such an invalidation in the present factual situation would leave ownership of the engines in petitioner and, as indicated by the first part of the lower court's opinion, would give petitioner certain rights against respondent under the doctrine of accession as applied in the State of California.

Second, the purpose underlying Section 1403 does not justify the rigorous interpretation given to that section by the District Court under the facts in the present case, even though the literal wording of the section might superficially apply to those facts. The history of Section 1403 indicates that the section was designed to protect a lender in basically two situations: lender loans money to purchaser and takes as security property "owned" by purchaser which in fact is owned or incumbered by a third party; lender loans money to purchaser in return for a purchase-money security interest and either a third party creditor subsequently attaches the purchased property or purchaser subse-

[11] 251 A.C.A. at 501.

quently sells the property to a bona fide purchaser. Depending upon the law of the given state the lender's security interest in the purchaser's property could be destroyed. Section 1403 effectively eliminates this possibility and, as stated in House Report No. 2165, facilitates the financing of spare equipment.

The above situations, the foundations of Section 1403, are simply not present in the case at bar. Respondents were not prejudiced in any manner by the maintenance transaction entered into between President and petitioner. Respondents knew that such a maintenance agreement would be necessary and that it was common practice in the industry to interchange engines under such an agreement [112]. It is true that President had agreed with respondents that President would not replace any equipment on the aircraft with equipment which was "subject to any lien or other mortgage, claim, charge or encumbrance" [Pltf. Ex. 11, Par. 10(c), p. 6], but such agreements cannot effect the interests of a third party when the conditional vendee actually replaces equipment with the third parties equipment in violation of the conditional vendee's contract.[12] Petitioner submits that Section 1403 was designed to protect respondents from the transfer of engines by President *to* petitioner, not from the transfer of engines to President *from* petitioner. The latter transaction was not prejudicial to respondents, respondents did not rely in any manner upon the transaction, and petitioner therefore does not believe that Section 1403 should be interpreted such that respondents are able to use it as a sword to destroy petitioner's ownership

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[12] *Goodrich Silvertown Stores v. Pratt Motor Co.* (1936), 198 Minn. 259; 68 A.L.R. 1242.

rights. If Section 1403 only provided that recordation placed all third parties on constructive notice of the recorded interest, there would be no question that respondents would be forced to prove additional facts creating an estoppel against petitioner in order to prevail.[13] Since respondents were unaffected by the transfer of aircraft engines to President by petitioner, petitioner contends that a similar showing of estoppel must be required under Section 1403 in order for respondents to prevail in this section.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted and it is further prayed by petitioner that this Honorable Supreme Court render its decision herein vacating the decision of the District Court of Appeal, Second Appellate District, State of California, dated May 31, 1967, and remanding this case to said District Court of Appeal for further proceedings not inconsistent with the opinion of this court.

Respectfully submitted,

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[13] *D. Q. Service Corp. v. Security Loan & Discount Co.* (1930), 210 Cal. 327, 292 Pac. 497.